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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182604
Party	Defendant Vision Pharma LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 77/226,994  
Filed: July 11, 2007  
Mark: VISRX  
Published in the Official Gazette: December 25, 2007

CORNERSTONE BIOPHARMA, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91182604
	)	
VISION PHARMA, LLC,	)	
	)	
Applicant.	)	

**PROVISIONS FOR PROTECTING  
CONFIDENTIALITY OF INFORMATION  
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, the parties have agreed to be bound by the terms of this order. As used in this order, the term "information" covers both oral testimony and documentary material.

Agreement of the parties is indicated by the signatures of the parties' attorneys at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. The terms are binding from the date the parties or their attorneys sign the order or from the date of imposition by a Board attorney or judge.

**TERMS OF ORDER**

**1) Classes of Protected Information.**

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

**Confidential** – Material to be shielded by the Board from public access.

**Highly Confidential** –Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

## **2) Information Not to Be Designated as Protected.**

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

## **3) Access to Protected Information.**

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.

- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

**Parties and their attorneys** shall have access to information designated as **confidential**, subject to any agreed exceptions.

**Outside counsel, but not in-house counsel**, shall have access to information designated as **highly confidential**.

**Independent experts or consultants** shall have access to information designated as **confidential** or highly confidential in accordance with the terms that follow in paragraph 4.

**Non-party witnesses and any other individual** not otherwise specifically covered by the terms of this order may be afforded access to **confidential** information in accordance with the terms that follow in paragraph 4.

#### **4) Disclosure to Any Individual Other Than Outside Counsel.**

Prior to any permitted disclosure of protected information to any individual other than inside counsel for a party, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

#### **5) Disclosure to Independent Experts or Consultants.**

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed **highly confidential** information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be in writing and must be personally served or forwarded by e-mail or facsimile, with a confirmatory copy sent by first class mail. The notification shall consist of a copy of a signed certification in substantially the form attached to this order, a curriculum vitae setting forth the name, address, occupation and professional background of the expert or independent consultant, and known present or former relationships between the independent expert or consultant and any known competitor of the disclosing party.

The party or its attorney receiving the notice shall have five (5) business days to object to disclosure to the expert or independent consultant. Any objection must be made in writing and must be personally served or forwarded by e-mail or facsimile, with a

confirmatory copy sent by first-class mail. Any objection must be for good cause and must set forth with particularity the reasons for the objection. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute within 5 business days, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond promptly with its arguments against disclosure or its objections will be deemed waived.

**6) Use of Protected Information.**

Any information, documents or things designated as **confidential** or **highly confidential** shall be used by the receiving party solely for pursuing the claims and defenses in the pleadings in this proceeding, for the depositions, preparation of motions, and trial of this proceeding, for any appeal of this proceeding, settlement discussions and negotiations, or any form of alternative dispute resolution, and for no other purpose whatsoever.

**7) Responses to Written Discovery.**

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 13.

**8) Production of Documents.**

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 13.

#### **9) Depositions.**

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party may designate the information as protected hereunder by making oral note of the protected nature of the information on the record.

The transcript of any deposition and all exhibits or attachments shall be considered **highly confidential** for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

#### **10) Filing Notices of Reliance.**

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

#### **11) Briefs.**

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 13 of this order.

#### **12) Handling of Protected Information.**

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

### 13) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

#### **CONFIDENTIAL**

*This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.*

### 14) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

### 15) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party

challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

**16) Third Parties.**

To the extent that documents, things and/or testimony are sought from a third party, such third party shall have the right to designate any such documents, things and/or testimony as **confidential** or **highly confidential** pursuant to this order.

**17) Board's Jurisdiction; Handling of Materials After Termination.**

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

Within 30 days after the final termination of this proceeding, the parties and their attorneys shall either: i) return to each disclosing party the protected information disclosed during the proceeding and all copies thereof; or ii) destroy the protected information and all copies thereof. In the event that a party elects to destroy material instead of returning it, it shall certify in writing to the disclosing party that such information has been destroyed. Notwithstanding the foregoing, outside counsel for each party may retain copies of pleadings, filings with the Board, deposition transcripts, deposition and trial exhibits, attorney notes, and other work product.

**18) Other Rights of the Parties and Attorneys.**

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege or work product during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order. Nothing herein shall be construed to limit or affect in any way a party's use of its own information designated as **confidential** or **highly confidential**.



This the 23<sup>rd</sup> day of October, 2008.



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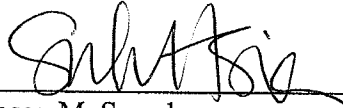
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**By Order of the Board, effective \_\_\_\_\_.**

\_\_\_\_\_

## **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 77/226,994  
Filed: July 11, 2007  
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CORNERSTONE BIOPHARMA, INC.,	)	
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Opposer,	)	
	)	
v.	)	Opposition No. 91182604
	)	
VISION PHARMA, LLC,	)	
	)	
Applicant.	)	

**ACKNOWLEDGMENT OF AGREEMENT OR  
ORDER PROTECTING CONFIDENTIALITY OF  
INFORMATION REVEALED DURING BOARD PROCEEDING**

I, \_\_\_\_\_ [print name], declare that I have been provided with a copy of the Agreement or Order regarding the disclosure of, and protection of, certain types of information and documents during and after the above-captioned opposition or cancellation proceeding before the Trademark Trial and Appeal Board.

I have read the Agreement or Order and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any information or documents disclosed to me in conjunction with any part I take in this proceeding.

I declare under the penalty of perjury that these statements are true and correct.

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[print title, if applicable]

\_\_\_\_\_  
[date]